

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 17 9 00 AM '92

DISPATCHED BY

MM Docket No. 92-334

In re Applications of

CENTRAL FLORIDA EDUCATIONAL FOUNDATION, INC.
Channel 202C3
Union Park, Florida

File No. BPED-881207MA

HISPANIC BROADCAST SYSTEM, INC.
Channel 202C3
Lake Mary, Florida

File No. BPED-891128ME

For Construction Permit for a New,
Noncommercial, Educational FM Station

Appearances

Joseph E. Dunne, III on behalf of Central Florida Educational Foundation, Inc.; *James L. Oyster* on behalf of Hispanic Broadcast System, Inc.; and *James W. Shook* on behalf of Chief, Mass Media Bureau.

**INITIAL DECISION OF ADMINISTRATIVE
LAW JUDGE EDWARD J. KUHLMANN**

Issued: September 8, 1992; Released: September 16, 1992

1. On February 25, 1992, six mutually exclusive applicants were designated for hearing for several communities in Florida. *Hearing Designation Order*, 7 FCC Rcd 1875 (1992). Two applicants, Central and Hispanic, remain to be considered on the following issues:

1. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and

whether other factors in the record demonstrate that the applicant will provide a superior FM educational broadcast service.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

2. A prehearing conference was held on May 15, 1992. *Order*, FCC 92M-317, released March 23, 1992; Tr. 1-11. Written testimony and exhibits were exchanged on July 13, 1992. *Memorandum Opinion and Order*, FCC 92M-496, released April 27, 1992. A hearing session to receive testimony and exhibits was held on July 21, 1992. Tr. 12-40. No witnesses were examined on their testimony and the parties jointly submitted evidence on the §307(b) issue. Tr. 20. The record was closed on July 21, 1992. Tr. 40; *Order*, FCC 92M-810, released July 23, 1992. Proposed findings and conclusions were filed on August 10, 1992 by the Bureau, Central and Hispanic and Southwest and Bible, which have now been dismissed. On August 21, 1992, replies were filed by Central, Hispanic and the Bureau.

FINDINGS OF FACT

Issue 1: Which proposal would best provide a fair, efficient and equitable distribution of radio service.

3. Central proposes to use noncommercial FM Channel 202 at Union Park, Florida and Hispanic proposes to use the channel at Lake Mary, Florida. The findings, which follow on this issue, are from Joint Exhibit 1.

4. The population and land area within each applicant's predicted 1 m/Vm (60 dbu) contour are as follows:

Applicant	Area (sq. km.)	Population
Central	3,688	581,812
Hispanic	3,906	539,539

5. Neither applicant proposes a first noncommercial educational FM service within its proposed service area. The following is a comparison of the service each applicant would provide to area and populations which presently receive only one noncommercial educational FM service.

Applicant	Area (sq. km.)	Population
Central	1,090	184,775
Hispanic	1,225	138,791

6. The Joint Exhibit contains no information with respect to the populations of and number of transmission services licensed or allocated to the various communities proposed by Central and Hispanic.

7. Central and Hispanic would provide a third and fourth noncommercial educational FM service to the following areas and populations.

Applicant	Area (sq. km.)	Population
Central 3rd	1,870	184,565
4th	728	212,472
Hispanic 3rd	1,847	184,552
4th	834	216,196

Neither Central nor Hispanic would provide a fifth noncommercial educational FM service within their proposed service areas.

Issue 2: The extent to which Central and Hispanic's proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants. Other factors in the record which demonstrate that Central or Hispanic will provide a superior FM educational broadcast service.

8. Central proposes to broadcast instructional programming produced by the Circle Community School in Orlando, Florida (which offers services to people who teach their children at home), Reformed Theological Seminary (which offers only graduate degrees in marriage and family counseling in Christian education, missionology, and ministry), Seminole County schools (which operates elementary and secondary public schools) and Stetson University (which is governed by an unidentified sect). Central Exh. 2. Central proposes to establish a student intern program, provide local programming service, Hispanic programming and Spanish language programming. *Id.* Central also proposes to provide information to parents who are teaching their children at home. *Id.* Central would provide Christian educational and instructional programming, programming in Spanish and English for "the personal and emotional needs of families," and programming for other interests in the community. *Id.*

9. Central states it will survey community leaders to determine community needs. Central Exh. 3. Central represents that two of its directors have been associated with broadcast stations or have broadcast experience. Central Exh. 5. Central also states that its directors have been involved in "Christian" education. Central Exh. 4. Central has prepared a list of four programs it will broadcast and a schedule. Central Exh. 6.

10. Hispanic is controlled by a board of directors whose members live in Puerto Rico and are Hispanic. Hispanic Exh. 1, at 1. Hispanic's cultural and educational objective is to provide Spanish "oriented," primarily secular, programming to Hispanic people within its proposed service area. Hispanic Exh. 2. The programming will be designed "to improve ability to comprehend and communicate in English." *Id.* It will be directed at English language comprehension and usage with Hispanics. *Id.* The programming will present cultural and religious information. *Id.* The programming will be made available to the Lake Mary School. *Id.* Hispanic's format will be directed at fostering harmony between two cultures. Hispanic Exh. 3. In addition, Hispanic will use the station to inform the Hispanic community about problems and needs in the service area. Hispanic Exh. 4. Hispanic has already conducted a telephone survey to determine community needs and problems. Hispanic Exh. 4.

11. Hispanic will teach English and American history and culture. Hispanic Exh. 3. Hispanic believes its programming will provide the non-Hispanic community with information about Spanish, Hispanic culture, and the needs of the Hispanic community. *Id.* Programming in Spanish language will be provided for the non-Spanish audience. *Id.* Hispanic has determined that there is a population to be served by its proposed programming. Hispanic Exh. 3.

12. Two of Hispanic's board members are experienced broadcasters and one of its principals is an experienced educator. Hispanic Exh. 5. Their experience will help Hispanic to effectuate its proposal. *Id.*

CONCLUSIONS

13. Section 307(b) considerations are dispositive of this case. Neither Central nor Hispanic will provide a first, full-time aural reception service. The record does not reflect that either one of them will provide a first local transmission service. Central and Hispanic will provide third and fourth services which are equal in importance. Central's overall service to 581,812 persons is 42,273 persons (or 8 percent) greater than that proposed by Hispanic. Central will also provide a second noncommercial educational FM service to 184,775 persons which is 45,984 (or 33 percent) more persons than Hispanic. Central is to be preferred over Hispanic for its provision of a second service. *Real Life Educational Foundation of Baton Rouge, Inc.*, 6 FCC Rcd 2577 (Rev. Bd. 1991).

14. Central argues that it will provide a first local service to Union Park and that Union Park has greater needs. But as the Bureau points out, the evidence on this issue is governed by the Joint Exhibit and the Joint Exhibit is silent on the claims made by Central. Hispanic makes similar arguments about the merits of its proposal to serve Hispanic listeners. But again the §307(b) exhibit is silent on Hispanic's claims. Central's provision of service to a substantial gray area leads to the conclusion that its proposal will best serve the public interest.¹

ACCORDINGLY, IT IS ORDERED that the petition for leave to amend filed August 17, 1992 by Central Florida Educational Foundation, Inc. IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the application of Hispanic Broadcast System, Inc. (File No. BPED-891128ME) IS DENIED and the application of Central Florida Educational Foundation, Inc. (BPED-881207MA) for a new noncommercial FM broadcast station on Channel 202C3 at Union Park, Florida IS GRANTED provided:

The permittee shall certify that an agreement is in effect requiring all stations to reduce power or cease operations as necessary to assure worker safety with respect to radiofrequency radiation when maintenance is performed at the site.

Documentation demonstrating compliance with the ANSI radiofrequency radiation limit may be submitted in advance of the filing of FCC Form 302. The Commission's staff will review it for compliance and respond by letter stating whether automatic PTA has been reinstated.²

FEDERAL COMMUNICATIONS COMMISSION

Edward J. Kuhlmann
Administrative Law Judge

FOOTNOTES

¹ Hispanic argues for a shared use of the frequency but its argument is unsupported by a factual showing. No shared time proposal is made in the Joint Exhibit.

² In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision will become effective 50 days after its public release pursuant to Sec. 1.276(d).